

PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: S.M. Y. SUNITHA,

ADC Order No.656

Appeal No.BV/3/2020-21

Date of hearing:06-12-2021

Date of order :14-07-2022

1. Name and address of the Appellant. : M/s Green Wood Estates, Hyderabad.
2. Name & designation of the Assessing Authority. : Deputy Commercial Tax Officer-2. Maredpally Circle, Hyderabad.
3. No.,Year & Date of order : TIN No.36389317452,dt.29-02-2020, (2013-14 to 2014-15-upto May, 2014 / Tax)
4. Date of service of order : 03-03-2020
5. Date of filing of appeal : 30-03-2020
6. Turnover determined by The Assessing Authority : -
7. If turnover is disputed:
 - (a) Disputed turnover : -
 - (b) Tax on disputed turnover : -
8. If rate of tax disputed:
 - (a) Turnover involved : -
 - (b) Amount of tax disputed : -
9. Amount of relief claimed : ₹8,78,505/-
10. Amount of relief granted : REMANDED
11. Represented by : Sri M. Ramachandra Murthy, Chartered Accountant

NOTE: An appeal against this order lies before the Telangana VAT Appellate Tribunal, Hyderabad within (60) days from the date of receipt of this order:

ORDER

M/s Green Wood Estates, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36389317452 and an

assessee on the rolls of the Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the assessment orders dated 29-02-2020 (A.O.No.18268) passed by the Deputy Commercial Tax Officer-2, Maredpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) for the tax periods falling under the year 2013-14 to 2014-15 (upto May, 2014) under the TVAT Act, disputing the levy of tax amounting to ₹8,78,505/-.

The grounds of appeal filed by the appellant are extracted hereunder:

"It is submitted that the impugned order is unjustifiable, arbitrary and illegal.

The learned DCTO has not granted proper opportunity to the appellant to explain the case. When the appellant has filed letter dated 24.2.2020 requesting to grant sufficient time, the learned DCTO has endorsed on 25.2.2020 posting the case to 28.2.2020.

Appellant has reported actual sale considerations in the returns filed and paid tax on 25% of such gross consideration, but the learned DCTO took the gross figures from the P&L Account, compared and levied tax on 25% of such figures. The details are as follows:-

Description	2013-14 Amount Rs.	April and May, 2014 Rs.
As per returns	11,2769,000	2,92,64,000
As per P&L A/c	14,68,98,863	2,92,64,000

It is submitted that no such tax on the so called differential amount is leviable. Receipts in P&L account are posted as per the Accounting Standards of ICAI based on WIP (work in progress) method and whereas the turnovers reported in the VAT 200 returns are the actual sale amounts, as per the registration of property made with the Sub Registrar. 'Turnover' for the purposes of the VAT Act is different from 'income' declared in the P&L account. The learned DCTO ought to have understood this concept. As and when the property is registered, tax is paid under Section 4 (7) (d) of the VAT Act, read with Rule 17 (4) of the VAT Rules.

It is therefore submitted that the entire demand is in the nature of double levy of tax and resultantly it is illegal and arbitrary. Appellant shall be explaining the figures at the time of hearing.

For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order and allow the appeal."

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant of the appellant appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for setting-aside of the impugned order.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant is engaged in the business of construction and selling of apartments / residential houses and opted to pay tax under composition under Section 4(7)(d) of the TVAT Act read with Rule 17(4) of the TVAT Rules according to which the appellant has to pay tax at 5% of 25% of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to the conditions as may be prescribed, as observed by the Audit Officer at pre-assessment stage. The Audit Officer further observed that on verification of the annual statements / Profit & Loss account statements, it was noticed that the turnovers reflected in the Profit & Loss account are higher than the turnovers reported in the monthly returns filed. Accordingly, the Audit Officer proceeded to adopt the turnovers reflected in the Profit & Loss account for the purpose of assessment and issued a show cause notice. On an observation that the appellant had neither responded to the said notice nor availed the opportunities of personal hearing provided to them, the Audit Officer passed orders confirming the proposals made in the show cause notice.

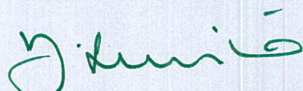
Such adoption of turnovers is vehemently assailed by the appellant stating that while the turnovers reflected in the Profit & Loss account are

based on work in progress method, whereas the turnovers reported in the monthly VAT 200 returns are the actual sale amounts as per the registration of the property made with the sub-registrar, more particularly the turnovers for the purpose of VAT Act are different from the income declared in the Profit & Loss account. It is further stated that since the appellant is doing business in construction and selling of apartments / residential houses and opted to pay tax under composition under Section 4(7)(d) of the TVAT Act read with Rule 17(4) of the TVAT Rules according to which the appellant has to pay tax at 5% of 25% of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to the conditions as may be prescribed, which fact was also admitted by the Audit Officer itself in the impugned order and as such adopting the total turnover as per the Profit & Loss account for the purpose of assessment and to levy tax thereon is not correct as the appellant has to pay tax at 5% on 25% of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher, which they have already disclosed and discharged the tax liability thereon at 5%.

There is a reasonable force in the contentions raised by the appellant in that when the appellant is engaged in the business of construction and selling of apartments / residential houses and opted to pay tax under composition under Section 4(7)(d) of the TVAT Act read with Rule 17(4) of the TVAT Rules, the appellant has to pay tax at 5% of 25% of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to the conditions as may be prescribed and not on the total turnover as per the Profit & Loss. However, as already observed above, since the Audit Officer has passed the impugned order confirming the proposals made in the show cause notice on the ground that the appellant had not responded to the said notice as well as to the reminder notices issued, I feel the entire issue involved herein warrants examination at the Assessing Authority's end.

For the reasons discussed above, I feel it just and proper to remit the matter back to the Assessing authority, who shall provide an opportunity to the appellant to file their objections along with documentary evidence if any, consider the same with that of the material already available on record and pass such orders in accordance with the provisions of law, after giving the appellant a reasonable opportunity to present their case. With this direction, the impugned order is set-aside on the disputed tax amounting to ₹8,78,505/- and the appeal thereon remanded.

In the end, the appeal is **REMANDED**.


APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To

The Appellants.

Copy to the Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyd.

Copy to the Dy.Commissioner(CT), Begumpet Division, Hyderabad.

Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.